

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #12	CCRB Case #: 201506032	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/07/2015 4:08 PM	Location of Incident: 421 Bainbridge Street	Precinct: 81	18 Mo. SOL 1/7/2017	EO SOL 1/7/2017	
Date/Time CV Reported Wed, 07/22/2015 10:03 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 07/22/2015 10:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Lenny Lutchman	17480	955104	PBBN
2. POM Pearce Martinez	5461	955137	PBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SSA Erek Powers	05297	944907	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Pearce Martinez	Force: PO Pearce Martinez used physical force against § 87(2)(b)	
B.POM Lenny Lutchman	Force: PO Lenny Lutchman struck § 87(2)(b) with an asp.	
C.POM Lenny Lutchman	Force: Police Officer Lenny Lutchman used physical force against § 87(2)(b)	

Case Summary

On July 22, 2015, § 87(2)(b) filed this complaint with the CCRB via the online website on behalf of § 87(2)(b) after seeing a § 87(2)(b) article which featured a video recording of the incident. The video does not have audio (**Board Review 01** and **Board Review 02**).

On July 7, 2015, at approximately 4:08 p.m., Police Officer Pearce Martinez and Police Officer Lenny Lutchman, from Patrol Borough Brooklyn North, responded to a radio run regarding a robbery-in-progress with a blade at 102 Saratoga Avenue in Brooklyn (**Board Review 03**). PO Martinez and PO Lutchman met with the 911 caller who stated that there were two males involved in the knifepoint robbery. The officers and the 911 caller canvassed the vicinity of this location until they observed two males who the 911 caller identified as the alleged robbers. One of the males fled on foot while PO Martinez and PO Lutchman attempted to place § 87(2)(b) the second male, under arrest. However, § 87(2)(b) evaded the officers and fled on foot before he could be taken into custody. PO Lutchman pursued § 87(2)(b) on foot to 421 Bainbridge Street. PO Martinez followed them via the marked car. At approximately 4:27 p.m., PO Martinez punched § 87(2)(b) in the face approximately three times (**Allegation A: Force- Physical Force**, § 87(2)(g) PO Lutchman struck § 87(2)(b) with an asp in the head, neck, and back (**Allegation B: Force- Struck with a Blunt Object**, § 87(2)(g) PO Lutchman also elbowed § 87(2)(b) in the back of the head (**Allegation C: Force- Physical Force**, § 87(2)(g) § 87(2)(b) was arrested and charged with robbery in the first degree, criminal possession of a weapon in the third degree, menacing in the first degree, and resisting arrest (**Board Review 04**).

§ 87(2)(b)

§ 87(2)(g)

Findings and Recommendations

Allegation A: Force- Police Officer Pearce Martinez used physical force against § 87(2)(b)

Allegation B: Force- Police Officer Lenny Lutchman struck § 87(2)(b) with an asp.

Allegation C: Force- Police Officer Lenny Lutchman used physical force against § 87(2)(b)

Given § 87(2)(b) pending criminal and civil cases at the time of the investigation, § 87(2)(b) attorney, § 87(2)(b), did not allow him to participate in this investigation. However, § 87(2)(b) was interviewed by IAB and he relayed the following. § 87(2)(b) had met up with an unknown male and had given him a pizza. He then continued walking when a marked car pulled up next to him. § 87(2)(b) entered the bodega at 421 Bainbridge Street, to secure himself because officers have “beaten” him up before and because officers from the 81st Precinct do not like him. PO Lutchman entered the bodega and mentioned something about a robbery. § 87(2)(b) did not know what was happening. § 87(2)(b) responded that he had nothing to do with a robbery and that the officers had the wrong guy. PO Lutchman did not tell § 87(2)(b) to put his hands behind his back or that he was being arrested. PO Lutchman grabbed § 87(2)(b) hand. PO Martinez then ran up and, without saying anything, punched § 87(2)(b) did not know how many times he was punched but the video evidence showed that it was multiple times. § 87(2)(b) did not recall what the officers said to him. Everything was a “blur” thereafter. This was his first interaction with PO Lutchman and PO Martinez (**Board Review 05**). § 87(2)(b) arrest photograph depicts swelling above his right eyebrow (**Board Review 06**). The command log entry of § 87(2)(b) arrest notes that he had a laceration to his head (**Board Review 06**).

§ 87(2)(b) was treated at § 87(2)(b) Hospital on § 87(2)(b). The pre-hospital care report notes § 87(2)(b) chief complaint as a soft issue injury on his right eyebrow. § 87(2)(b) stated that he was assaulted and hit in the face. § 87(2)(b) was diagnosed with an open wound (laceration) to the face.

The laceration was cleaned using saline solution and treated with five stitches. § 87(2)(b) was also given ointment (see **Privileged Documents**).

§ 87(2)(b) an employee at the bodega, stated that he and another coworker only known as § 87(2)(b) were near the front door of the bodega. § 87(2)(b) entered the store and said something along the lines of, “Turn on the camera.” § 87(2)(b) did not say anything else. Neither § 87(2)(b) nor § 87(2)(b) responded. § 87(2)(b) ran down an aisle and then walked back to the front of the bodega. Approximately one minute later, PO Lutchman and PO Martinez entered the bodega. PO Lutchman said, “Don’t move. Don’t resist.” PO Martinez did not say anything. PO Lutchman had an asp in his hand and told § 87(2)(b) not to move three times. § 87(2)(b) said, “You have got the wrong guy. I have a family.” § 87(2)(b) put his arms up to shoulder length with his palms facing outward, then back down to his side, and then back up to shoulder level. § 87(2)(b) was not sure how many times § 87(2)(b) did this. PO Lutchman then hit § 87(2)(b) with the asp in the left leg. § 87(2)(b) did not know how many times PO Lutchman hit § 87(2)(b) but it was more than once. PO Lutchman also hit § 87(2)(b) with his asp in the left ribs, more than once. PO Lutchman said, “Don’t move” as he hit him. § 87(2)(b) moved, but § 87(2)(b) could not describe his movement beyond that it was “not dangerous.” PO Martinez punched § 87(2)(b) in the head, near the left eye, more than once. PO Martinez did not say anything to § 87(2)(b) prior to striking him. The officers did not speak to each other prior to the punches and asp strikes. Both officers placed § 87(2)(b) in handcuffs. § 87(2)(b) tensed his muscles at one point while the officers were attempting to place him in handcuffs. § 87(2)(b) had a lot of blood on his face, but § 87(2)(b) could not see where the blood was coming from (**Board Review 07 and 14**).

The video evidence shows § 87(2)(b) walk up to the counter at the front of the bodega and lean his elbows on it. He appears to be speaking with someone off camera. PO Lutchman walks towards § 87(2)(b) on the right hand corner. Between 00:06 and 00:10, PO Lutchman holds an asp in his right hand and appears to be speaking to § 87(2)(b). PO Lutchman places his left hand on § 87(2)(b) right shoulder and holds it there. § 87(2)(b) holds his left hand up at mid-chest height with his palm open and facing the ceiling. His right hand rests on the counter. PO Lutchman then grabs § 87(2)(b) left wrist. Both appear to be speaking with each other. Between 00:11 and 00:15, PO Lutchman appears to continue to speak with § 87(2)(b) and PO Lutchman then lifts his asp to hip level. Simultaneously, § 87(2)(b) lifts his right hand up to mid chest level with the palm open and facing PO Lutchman. Between 00:16 and 00:20, § 87(2)(b) continues to keep both of his hands open and facing PO Lutchman. PO Lutchman releases § 87(2)(b) left hand and § 87(2)(b) raises it higher with both palms facing PO Lutchman. PO Lutchman steps back. § 87(2)(b) still appears to be speaking with PO Lutchman. Between 00:20 and 00:25, PO Martinez enters the frame from the right and walks directly to § 87(2)(b) with his hands stretched toward § 87(2)(b). § 87(2)(b) remains in the same position. PO Martinez then punches § 87(2)(b) with his right hand on the left side of his head. § 87(2)(b) torso and head fold to the counter, his face leaning toward it. PO Martinez punches § 87(2)(b) a second time in the back of the head with his right hand. PO Martinez punches § 87(2)(b) a third time in the back of the head with his right hand. PO Lutchman leans toward § 87(2)(b) with his asp still in his right hand. PO Martinez grabs the back of § 87(2)(b) neck and pulls him off the counter. § 87(2)(b) hands cover his head. PO Lutchman strikes § 87(2)(b) head with his asp and § 87(2)(b) hands come off his head and return. PO Martinez pushes his left arm onto § 87(2)(b) back. PO Lutchman leans forward such that his body is pressed against § 87(2)(b) head. PO Lutchman holds his asp near § 87(2)(b) ribs, on his back, as PO Martinez moves slightly back (**Board Review 01 and Board Review 02**).

Between 00:26 and 00:30, PO Martinez grabs § 87(2)(b) left hand, which § 87(2)(b) turns and moves to his back. Simultaneously, PO Lutchman hits § 87(2)(b) three times with the butt of his asp in the left side of his ribs. PO Martinez touches PO Lutchman's left hand which is holding the asp and PO Lutchman stops hitting § 87(2)(b). PO Martinez removes his handcuffs from his tool belt. § 87(2)(b)

§ 87(2)(b) left hand is still behind his back and his head is down with PO Lutchman's torso leaning over § 87(2)(b) head. Between 00:31 and 00:35, PO Martinez handcuffs § 87(2)(b) left wrist. § 87(2)(b) moves off the counter and PO Martinez grabs his right hip and pulls it toward himself. PO Lutchman strikes § 87(2)(b) with the butt of the asp three more times in the back. Between 00:36 and 00:45, § 87(2)(b) remains perpendicular with the counter. PO Martinez appears to be saying something. PO Martinez pulls § 87(2)(b) away from the camera and § 87(2)(b) places his right hand behind his back. PO Martinez holds his left hand. While § 87(2)(b) is moving his hand behind his back, PO Lutchman hits him again with the base of his asp and holds his asp there. Sgt. Erik Powers enters the frame and grabs § 87(2)(b) hands with PO Martinez. Between 00:46 and 00:55, Sgt. Powers and PO Martinez pull § 87(2)(b) hands closer together. PO Lutchman hits § 87(2)(b) three more times with the butt of his asp in his back. PO Lutchman then pushes § 87(2)(b) head and face toward the counter with his left arm. A fourth officer enters the frame and stands behind PO Lutchman. PO Martinez and Sgt. Powers remain with § 87(2)(b) hands, but their actions are obscured by an unidentified wrist that appears in the frame. Between 00:56 and 01:10, a fifth officer enters the frame. PO Lutchman and Sgt. Powers back away from § 87(2)(b) PO Martinez remains behind § 87(2)(b) turns his face upward and appears to be speaking. There is blood on § 87(2)(b) face. § 87(2)(b) stand up straight and all of the officers and § 87(2)(b) begin to walk out of the store (**Board Review 01** and **Board Review 02**).



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Prior to his CCRB statement, PO Martinez listened to the recording of his IAB interview regarding this incident. Both statements were consistent. PO Martinez stated that he and PO Lutchman responded to a radio run regarding a suspicious male with a knife at 102 Saratoga Avenue. The officers met with a male, identified via police documents as § 87(2)(b) who said that two males with a knife “took a bunch of stuff from the counter.” § 87(2)(b) described the two males as a black male who wore an orange hat, a black book bag, and held a clipboard and a second black male who wore a short-sleeve shirt and a tank top. § 87(2)(b) did not specify which of the two males had the knife and he did not state whether there was one or more knives involved. The officers and § 87(2)(b) entered the marked car and canvassed for the two males. Approximately two minutes later, § 87(2)(b) pointed at two males who matched the descriptions he had provided and confirmed that they were the suspects. PO Martinez pulled up next to the males on the corner of Howard Avenue and Sumpter Street. PO Lutchman exited the marked car and one of the males ran. The second male, identified as § 87(2)(b) remained in place but placed his hands up by his waist as if he was about to run. PO Lutchman grabbed § 87(2)(b) and placed him with his back against a fence. § 87(2)(b) was “so erratic” by not staying still, moving his hands all over the place, trying to push away from PO Lutchman, and yelling something along the lines of, “I had nothing to do with this.” PO Martinez noted the stop over the radio and approached. PO Martinez repeatedly asked § 87(2)(b) if he had a knife. PO Martinez did not recall what § 87(2)(b) responded. PO Martinez then patted § 87(2)(b) left pants pocket and felt something that was consistent with the size of a switchblade. PO Martinez attempted to enter the pocket twice, but § 87(2)(b) moved his body away. PO Martinez then grabbed § 87(2)(b) left wrist and reached for his handcuffs. § 87(2)(b) “whipped” his hand out of PO Martinez’s grip, pushed through the officers, and ran on Howard Avenue. § 87(2)(b) did not attempt to strike the officers at any point. PO Lutchman pursued § 87(2)(b) on foot and he pursued § 87(2)(b) via the marked car and lost sight of them at one point. PO Lutchman yelled over the radio, “Martinez. He’s in the deli/bodega.” PO Martinez thought that PO Lutchman was either seriously hurt or was going to get hurt because he yelled “at the top of his lungs.” PO Lutchman did not specify which bodega he was at; however, at the time of the incident, PO Martinez and PO Lutchman were usually on foot posts so they were familiar with the area. PO Martinez

knew exactly which bodega PO Lutchman was referring to as there was only one bodega in their foot post **(Board Review 08)**.

PO Martinez stated that he arrived approximately thirty seconds later. PO Martinez stood outside of the bodega and, from his angle, he could not see inside because the storefront doorway has a 45 degree angle layout. PO Martinez could only see PO Lutchman's back and an asp in his right hand. The asp was opened and on his side. PO Martinez could not see § 87(2)(b) PO Martinez ran inside the bodega and saw § 87(2)(b) and PO Lutchman facing each other. PO Martinez did not recall where § 87(2)(b) hands were. Given everything that had happened, including § 87(2)(b) being identified as a suspect in a knife point robbery, § 87(2)(b) not allowing PO Martinez to frisk and search him, § 87(2)(b) running away from the officers, and PO Lutchman yelling over the radio, PO Martinez believed that PO Lutchman and § 87(2)(b) were in a struggle. He believed PO Lutchman feared for his life because he had his asp out and they rarely take their asps out unless there is a weapon involved. § 87(2)(b) had already not followed any of the officers' orders and PO Martinez decided to gain compliance quickly. Therefore, immediately upon entering, PO Martinez approached and punched § 87(2)(b) in the face two or three times, consecutively. § 87(2)(b) went into a counter on his right side, and PO Martinez and PO Lutchman held him down. PO Martinez reached to grab his handcuffs and then grabbed one of § 87(2)(b) hands; he did not recall which one. § 87(2)(b) kept his other hand under his body and would not move it. PO Martinez did not recall whether he or PO Lutchman attempted to remove § 87(2)(b) arm from underneath his body but they were able to do so. PO Martinez did not recall if this occurred before or after handcuffing one of his wrists. PO Martinez told § 87(2)(b) throughout, "Give me your hands." § 87(2)(b) was handcuffed within a minute. PO Lutchman held § 87(2)(b) down, but PO Martinez did not recall how. PO Martinez did not recall whether PO Lutchman gave § 87(2)(b) any commands. PO Martinez did not see PO Lutchman strike § 87(2)(b) with the asp. PO Martinez did not recall whether PO Lutchman still had his asp in his hand. § 87(2)(b) did not attempt to strike PO Martinez or PO Lutchman at any point. At some point during the struggle, § 87(2)(b) cut himself against the counter. § 87(2)(b) had a "huge" laceration above one of his eyebrows and his eye was bleeding. § 87(2)(b) did not have any other injury. Neither PO Martinez nor PO Lutchman sustained injuries as a result of this incident. PO Martinez processed § 87(2)(b) arrest. § 87(2)(b) was charged with robbery. A knife was not recovered. PO Martinez was not sure, but he did not believe that the other suspect was arrested **(Board Review 08)**.

§ 87(2)(g) Prior to his CCRB testimony, PO Lutchman listened to the recording of his IAB interview regarding this incident; both statements were consistent. Both males were considered under arrest as they were positively identified as the suspects of the robbery. PO Lutchman approached and told § 87(2)(b) why he was being stopped. § 87(2)(b) was agitated, as he looked in the direction of the other male, and asked, "Why are you stopping me for?" PO Lutchman did not recall the details of their conversation. The officers told § 87(2)(b) that they had to place him under arrest and instructed him to place his hands behind his back. § 87(2)(b) ran. Neither PO Lutchman nor PO Martinez frisked § 87(2)(b) and PO Lutchman did not recall seeing any bulges on § 87(2)(b) PO Lutchman ran after § 87(2)(b) for several blocks for approximately five minutes, until § 87(2)(b) ran into the bodega. PO Lutchman screamed over the radio to PO Martinez, "Pearce, he's in the deli." There are a lot of bodegas in the area so PO Lutchman did not know how PO Martinez knew which one he was referring to. PO Lutchman did not know whether or not § 87(2)(b) had a knife and he did not want to take any chances, so he opened his asp and held it in his right hand before entering the bodega. PO Lutchman ran inside the bodega and saw § 87(2)(b) at the storefront, by a counter on the left. The counter was the height of a table. § 87(2)(b) paced back and forth. PO Lutchman stated that, as per the video evidence, he gave § 87(2)(b) verbal instructions; however, he did not recall what these instructions were. PO Lutchman initially stated that § 87(2)(b) hands were "all over" and up and down, but he then stated that he did

not recall what § 87(2)(b) did with his hands. PO Lutchman attempted to grab § 87(2)(b) left hand and § 87(2)(b) pulled away. PO Lutchman then took a step back. § 87(2)(b) said something that made PO Lutchman fear for his life, but he did not recall what he said. PO Martinez entered the bodega approximately 30 seconds to a minute later. During that time, PO Lutchman remained with his asp up, in a ready stance, and § 87(2)(b) remained standing with his arms moving around. § 87(2)(b) did not have anything in his hands. PO Lutchman believed he was on § 87(2)(b) rear left side and PO Martinez was on § 87(2)(b) rear right side. PO Lutchman did not recall PO Martinez giving § 87(2)(b) any commands. PO Lutchman did not know how long he issued commands for and he did not know how many commands he gave § 87(2)(b) before using force (**Board Review 09**).

PO Lutchman added that he struck § 87(2)(b) with his asp to get him to comply with instructions. PO Lutchman did not recall how many times he struck § 87(2)(b) with the asp. PO Lutchman struck him somewhere in the back upper body, but he did not recall specifically where. PO Lutchman could not state whether he struck § 87(2)(b) with the asp in the head. However, upon reviewing the video evidence (**Board Review 01; from 00:20 to 00:23**), PO Lutchman affirmed that, as per the video, he struck § 87(2)(b) with the asp in the head. PO Lutchman did not recall how § 87(2)(b) was positioned during the asp strikes and he did not recall § 87(2)(b) reactions to the asp strikes. Both officers attempted to subdue § 87(2)(b) and handcuff him. However, PO Lutchman did not see what PO Martinez did. PO Lutchman attempted to grab § 87(2)(b) hands. He did not know if PO Martinez also made attempts to grab § 87(2)(b) hands, but believed he did because PO Martinez handcuffed § 87(2)(b). It took the officers several seconds to handcuff § 87(2)(b) because he did not comply with commands to put hands behind his back. PO Lutchman did not recall where § 87(2)(b) hands were, but they were not behind his back. PO Lutchman did not know if § 87(2)(b) did anything with his hands. PO Lutchman did not see PO Martinez punch § 87(2)(b) but he did lean his body against § 87(2)(b) body to hold him down and stop him from moving. PO Lutchman did not recall hitting § 87(2)(b) head with his elbow. PO Lutchman was shown video evidence which shows PO Lutchman using his elbow to make contact with § 87(2)(b) (**Board Review 01; from 00:45 to 00:50**). PO Lutchman stated that he did this because § 87(2)(b) raised his body and he wanted to hold him down and prevent him from getting anything from his waistband. § 87(2)(b) did not make any attempt to fight or strike PO Lutchman or PO Martinez (**Board Review 09**).

Event no. § 87(2)(b) shows that, at approximately 4:08 p.m., a male caller reported two males with a blade at 102 Saratoga Avenue threatening to “slice” people. The males were described as black males both wearing white shirts and jeans. At approximately 4:15 p.m., Sector F-3 (identified as PO Pearce Martinez and PO Lenny Lutchman) conducted a canvass. At approximately 4:27 p.m., there was one arrest (**Board Review 03**).

According to § 87(2)(b) arrest report and the accompanying complaint report, § 87(2)(b) stated that two unknown perpetrators forcibly removed merchandise from his store while holding a switchblade at him. The perpetrators fled by foot. While canvassing with § 87(2)(b) he positively identified the perpetrators. The perpetrators fled. § 87(2)(b) was apprehended by PO Lutchman. § 87(2)(b) intentionally resisted arrest. § 87(2)(b) was charged with robbery in the first degree, criminal possession of a weapon in the third degree, menacing in the first degree, and resisting arrest (**Board Review 04**).

According to Patrol Guide Procedure 203-11, only the minimum amount of force necessary to overcome resistance will be used to effect an arrest (**Board Review 10**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 11**).
- PO Pearce Martinez has been a member-of-service for four years and has been a subject in one CCRB complaint and two allegations (physical force and stop), none of which were substantiated. PO § 87(2)(g)
- PO Lenny Lutchman has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
 - § 87(2)(b) filed a Notice of Claim with the City of New York claiming assault battery, excessive use of force, false arrest, false imprisonment, malicious persecution, malicious abuse of process, negligence, personal injuries, civil rights violations, mental distress, and intentional infliction of emotional distress. § 87(2)(b) is seeking an unspecified amount as redress (**Board Review 12**).
 - § 87(2)(b)
- [REDACTED]

Squad No.: 12

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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